

BRAE
CORPORATION

No.

5-0224154

Date JAN 3 1979

Fee \$100.00

9992

RECORDATION NO. Filed 1425

JAN 3 1979-2 50 PM

INTERSTATE COMMERCE COMMISSION

9993

RECORDATION NO. Filed 1425

ICC Washington, D. C.

JAN 3 1979-2 50 PM

January 2, 1978

INTERSTATE COMMERCE COMMISSION

H. G. Homme, Jr.
Acting Secretary
Interstate Commerce Commission
Washington, D. C. 20423

RECORDATION NO.

9992A

Filed 1425

JAN 3 1979-2 50 PM

FEE OPERATION I.C.C.

JAN 3 2 44 PM '79

RECEIVED

Dear Sir:

Enclosed for filing and recordation pursuant to Section 20c of the Interstate Commerce Act are the following documents relating to the railroad equipment described and marked in accordance with Schedule I attached hereto:

- (1) Lease of Railroad Equipment dated as of December 1, 1978 between Gould Financial Inc. and Brae Corporation ("Lease");
- (2) Lease of Railroad Equipment dated as of December 1, 1978 between Brae Corporation and Michigan Interstate Railway Company ("Sublease"); and
- (3) Assignment of Lease dated as of December 1, 1978 between Brae Corporation and Gould Financial Inc. ("Assignment of Sublease").

The names and addresses of the parties to the documents listed above are as follows:

(1) Lease

- (a) Lessor: Gould Financial Inc.
10 Gould Center
Rolling Meadows, Illinois 60008
- (b) Lessee: Brae Corporation
Three Embarcadero Center
San Francisco, CA 94111

(2) Sublease; Assignment of Sublease

- (a) Lessor-
Assignor: Brae Corporation
Three Embarcadero Center
San Francisco, CA 94111

- (b) Assignee: Gould Financial Inc.
10 Gould Center
Rolling Meadows, Illinois 60008
- (c) Lessee: Michigan Interstate Railway Company
P.O. Box 619
1801 West Main Street
Owosso, Michigan 48867


Please file and record the enclosed documents and cross-index them under the names indicated below:

- (1) Lease: the Lessor and the Lessee; and
- (2) Sublease: the Lessor-Assignor, the Assignee and the Lessee.

Also enclosed is our check payable to the order of the Interstate Commerce Commission in the amount of \$100, the prescribed fee for filing and recording the enclosed documents.

Return to the person presenting this letter, together with your letter confirming such filing and recordation and your fee receipt therefor, all counterparts of the enclosed documents not required for filing.

Very truly yours,


Michael T. Everett
Assistant Secretary

Enclosures

9993
RECORDATION NO. Filed 1425

JAN 3 1979 - 2 50 PM
INTERSTATE COMMERCE COMMISSION

LEASE OF RAILROAD EQUIPMENT
dated as of December 1, 1978

between

BRAE CORPORATION,
as Lessee

and

GOULD FINANCIAL INC.
as Lessor

[20 High Cube Box-Cars Manufactured
by Greenville Steel Car Company]

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SCHEDULES

- A. Purchase Agreement; Units
- B. Casualty Values

EXHIBITS

- I. Form of Certificate of Acceptance

LEASE OF RAILROAD EQUIPMENT dated as of December 1, 1978, between BRAE CORPORATION, a Delaware corporation (the "Lessee"), and GOULD FINANCIAL INC., a Delaware corporation (the "Lessor").

R E C I T A L S

1. The Lessee desires to lease from the Lessor all units of railroad equipment described in Schedule A hereto delivered by the Builder (as hereinafter defined) and accepted pursuant to § 2 hereof (the "Units"), upon the terms and subject to the conditions hereinafter provided.

2. The Lessee has entered into a Lease of Railroad Equipment dated as of December 1, 1978 (the "Sublease") with Michigan Interstate Railway Company, a Michigan corporation (the "Sublessee") with respect to the Units.

3. The Sublessee is assigning to the Lessor the Sublessee's rights under an agreement described in Schedule A hereto (the "Purchase Agreement") with the builder identified in Schedule A hereto (the "Builder"), pursuant to which the Builder was to manufacture, sell and deliver to the Sublessee the Units.

4. As security for performance of the Lessee's obligations under this Lease, the Lessee is assigning to the Lessor, pursuant to an assignment of lease dated as of the date hereof (the "Assignment"), substantially in the form of Exhibit II to the Sublease, the Lessee's rights under the Sublease.

Accordingly, the Lessor and the Lessee agree as follows:

§ 1. Lease. In consideration of the Rent (as defined in § 4 hereof) to be paid and the covenants to be performed by the Lessee hereunder, the Lessor hereby leases the Units to the Lessee, upon the terms and subject to the conditions hereinafter set forth, for the entire Term (as defined in § 6 hereof).

§ 2. Acceptance of Units. The Lessor hereby appoints the Lessee as its agent for inspection and acceptance

of the Units from the Builder. The Lessor will cause each Unit to be tendered to the Lessee at the point or points within the United States of America at which, and on the date on which, such Unit is delivered by the Builder to the Lessor. The Lessee will cause an agent or employee of the Lessee (who may be an agent or employee of the Sublessee) to inspect each Unit and if such Unit is found to be acceptable, to execute and deliver to the Lessor a certificate of acceptance, substantially in the form attached hereto as Exhibit I (a "Certificate of Acceptance"). Upon the delivery of a Certificate of Acceptance and the satisfaction of the conditions set forth in § 3 hereof with respect to any Unit, such Unit shall be deemed to have been accepted by the Lessee and shall become subject to this Lease.

§ 3. Conditions. The obligation of the Lessor to cause each Unit to be tendered to the Lessee pursuant to § 2 hereof is subject to the receipt by the Lessor, on or before the date on which any Units are delivered and accepted, of the following documents, each of which shall be in form and substance satisfactory to Messrs. Winston & Strawn, counsel for the Lessor:

(i) a duly executed copy of this Lease, designated as the original hereof;

(ii) evidence that this Lease, the Assignment and the Sublease have been executed and delivered by the respective parties thereto and filed and recorded with the Interstate Commerce Commission (the "ICC") pursuant to Section 20c of the Interstate Commerce Act, as amended (the "Act");

(iii) all certificates of insurance required to be delivered by the Lessee pursuant to § 10 hereof;

(iv) a certificate of an officer of the Lessee dated a date prior to delivery of such Units as to a true and correct copy, such copy being attached thereto, of the resolutions duly adopted by the Lessee's board of directors (or the executive committee thereof), authorizing the execution, delivery and performance of this Lease and the transactions contemplated hereby, which resolutions have not been amended or modified and remain in full force and effect, and as to the incumbency and specimen signatures of any officers of the Lessee executing this Lease and any other documents or instruments contemplated hereby;

(v) a certificate dated a date prior to delivery of such Units of an executive officer of the Lessee to the effect that:

A. no Event of Default (as defined in § 17 hereof) or event or condition which with the giving of notice or passage of time or both would constitute an Event of Default has occurred and is continuing;

B. each of representations and warranties of the Lessee set forth in § 21(a) hereof is true and correct as of such date with the same force and effect as if it had been made and as of on such date; and

C. each Unit is new and will not have been placed in service or otherwise used by the Lessee (or any other person) prior to the delivery and acceptance thereof pursuant to § 2 of this Lease; and

(vi) an opinion of counsel for the Lessee dated a date prior to delivery of such Units addressed to the Lessor, to the effect that:

A. the Lessee is a corporation duly organized, validly existing and in good standing under the laws of its jurisdiction of incorporation, has all requisite corporate power and authority to own its properties and to carry on its business as presently conducted and is duly qualified to do business and in good standing in each jurisdiction in which the failure to so qualify would have a material adverse effect upon the financial condition of the Lessee or its ability to perform its obligations under this Lease;

B. except as the Lessee has previously disclosed in writing to the Lessor, there are, to the knowledge of such counsel, no actions at law or in equity pending or threatened, by or against (whether or not purportedly on behalf of the Lessee), or affecting the Lessee or any of its subsidiaries or properties, or proceedings

by or before any governmental commission, bureau or other administrative agency pending or threatened against the Lessee which, in either case, if adversely determined would have a material adverse effect upon the business or property of the Lessee and its subsidiaries, on a consolidated basis, or upon the Lessee's ability to perform its obligations under this Lease;

C. the Lessee has all requisite corporate power to execute and deliver this Lease and to perform its obligations hereunder; this Lease has been duly authorized, executed and delivered by the Lessee and, assuming due authorization, execution, and delivery hereof by the Lessor, constitutes a legal, valid and binding obligation, enforceable against the Lessee in accordance with its terms, subject, as to enforcement of remedies, to applicable bankruptcy, moratorium and insolvency laws and other similar laws affecting creditors' rights generally and to laws or judicial decisions limiting the availability of the remedy of specific performance;

D. except for the filing and recordation of the Lease, the Assignment and the Sublease with the ICC in accordance with Section 20c of the Act and, subject to the effect of liens which do not appear in the records maintained by the ICC pursuant to Section 20c of the Act (and such counsel is not aware of any such liens), no other act, filing, recording, registering or deposit (or giving of notice) is necessary to protect the right, title and interest of the Lessor under this Lease and in the Units in the United States of America, other than the filing of a financing statement on form UCC-1 with respect to the Assignment with the Secretary of State of the State of California;

E. the execution, delivery and performance of this Lease by the Lessee will not conflict with, result in a breach of, or constitute a default under, the corporate charter or by-laws of the Lessee or, to the knowledge of such counsel, any provision of law, any regulation, order, writ, injunction or decree of any court or governmental instrumentality, any note, indenture, mortgage, deed of trust, equipment trust agreement, conditional sale agreement, material lease or other agreement or instrument to which the Lessee is a party or by which its property may be bound;

F. no authorization or approval is required from any governmental agency or commission or any public or quasi-public body or authority with respect to the execution, delivery or performance by the Lessee of this Lease or for the enforceability hereof against the Lessee; and

G. to the knowledge of such counsel, the Lessee is not in default in any material respect with regard to any order, writ, injunction or decree of any court or Federal, state, municipal or other governmental department, commission, board, bureau, agency or instrumentality;

(vii) an invoice and warranty bill of sale from the Builder covering such Units; and

(viii) a Certificate of Acceptance for such Units pursuant to § 2 hereof.

§ 4. Rent. The Lessee agrees to pay to the Lessor, as basic rent ("Rent") for each Unit subject to this Lease, 60 quarterly installments, each in the amount of 3.163913% of the Purchase Price (as hereinafter defined) of such Unit. The amount of each quarterly installment of Rent may be adjusted as provided in § 22 hereof. The installments of Rent shall be payable in arrears on January 1, April 1, July 1 and October 1 in each year, commencing on April 1, 1979.

For the purpose hereof, "Purchase Price" shall mean, with respect to any Unit, the base price of such Unit set forth in Schedule A hereto.

If any of the Rent payment dates referred to above is not a business day, the Rent otherwise payable on such date shall be payable on the next succeeding business day. For the purpose hereof, "business day" shall mean any calendar day, other than a Saturday, Sunday or day on which banking institutions in Chicago, Illinois or San Francisco, California are permitted or obligated to remain closed.

All payments provided for in this Lease shall be made to the Lessor at the address specified in § 25 hereof or at such other place as the Lessor shall from time to time specify in writing. The Lessee agrees to make each payment provided for herein in funds immediately available to the Lessor in Chicago, Illinois or at such other place as the Lessor shall from time to time specify in writing.

§ 5. Net Lease. This Lease is a net lease. The Lessee's obligation to pay all Rent and other amounts payable hereunder is absolute and unconditional. The Lessee shall not be entitled to any abatement or reduction of Rent or setoff against Rent or such other amounts, including, but not limited to, abatements, reductions or setoffs due or alleged to be due by reason of any past, present or future claims of the Lessee against the Lessor under this Lease, against the Builder or otherwise, except that this Lease may be terminated pursuant to the express provisions hereof. All Rent and other amounts payable by the Lessee hereunder will be paid free of expense to the Lessor for collection and other charges. Except as otherwise expressly provided in § 9 hereof, this Lease shall not terminate, and the respective obligations of the Lessor and the Lessee shall not be affected, by reason of any defect in, damage to, loss of possession or use of or destruction of all or any of the Units from whatsoever cause, any liens, encumbrances or rights of others with respect to any of the Units, the prohibition of or other restriction against the Lessee's use of all or any of the Units, the interference with such use by any person or entity, the invalidity or unenforceability or lack of due authorization of this Lease, any insolvency of or any bankruptcy, reorganization or similar proceeding by or against the Lessee, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding. It is the stated intention of the parties hereto that all Rent and other amounts payable by the Lessee hereunder shall continue to be payable in all events in the manner and at the times herein provided unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Lease. To the

extent permitted by applicable law, the Lessee hereby waives any and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender this Lease with respect to all or any of the Units, except in accordance with the express terms hereof. Each payment of Rent or other amount made by the Lessee hereunder shall be final and the Lessee shall not seek to recover all or any part of such payment from the Lessor for any reason whatsoever.

§ 6. Term. The term of this Lease as to each Unit shall begin on the date such Unit is accepted pursuant to § 2 hereof and, subject to the provisions of §§ 9, 17, and 23 hereof, shall terminate 15 years after January 1, 1979. The obligations of the Lessee (including, but not limited to, its obligations under §§ 8, 9, 10, 15, 18, 20 and 22 hereof) shall survive the expiration or other termination of this Lease.

For the purpose hereof, the "Term" for each Unit shall include the term described in the immediately preceding paragraph and any renewal term or terms pursuant to § 23 hereof.

§ 7. Identification. The Lessee will cause each Unit to be kept numbered with the identifying number set forth in Schedule A hereto. The Lessee will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each Unit, in letters not less than one inch in height, the words "GOULD FINANCIAL INC., OWNER AND LESSOR UNDER A LEASE FILED UNDER SECTION 20c OF THE INTERSTATE COMMERCE ACT", or other appropriate words designated by the Lessor, with appropriate changes and additions thereto as from time to time may be required by law in order to protect the interests of the Lessor in such Unit and the rights of the Lessor under this Lease. The Lessee shall not place in operation or exercise any control or dominion over any Unit under this Lease until such words shall have been so marked on both sides thereof and will replace promptly any of such words which may be removed, defaced or destroyed. The Lessee shall not change the identifying number of any Unit until (i) a statement of the new number or numbers to be substituted therefor shall have been delivered to the Lessor and filed, recorded and deposited by the Lessee in all public offices where this Lease shall have been filed, recorded and deposited and (ii) the Lessee shall have furnished the Lessor an opinion of counsel to the effect set forth in subclause (vi)D of § 3 hereof.

Except as provided in the immediately preceding paragraph, the Lessee will not allow the name of any person, association or corporation to be placed on any Unit as a designation that might be interpreted as a claim of ownership; provided, however, that the Units may be lettered with the names or initials of, or other insignia customarily used by, the Lessee, the Sublessee or any Affiliate (as defined in § 19 hereof).

§ 8. Taxes. All payments to be made by the Lessee hereunder will be free of expense to the Lessor with respect to, and the Lessee hereby agrees to pay when due, the amount of, any local, state, Federal or foreign taxes or foreign withholdings or certification, registration or license fees, assessments, duties, charges, fines or penalties now or hereafter levied or imposed upon or in connection with or measured by this Lease, or any sale, rental, use, payment, shipment, delivery, maintenance, repair, condition, return or other disposition of any Unit under the terms of this Lease (collectively, "Impositions"). The Lessee assumes and agrees to pay when due all Impositions in addition to all other payments required to be made by it pursuant hereto and agrees to indemnify, protect, defend, save and keep harmless, on an after tax basis, the Lessor against all Impositions. The Lessor agrees to provide the Lessee with notice of any Impositions directed to the attention of the Lessor.

Notwithstanding anything contained in this § 8 to the contrary, the Lessee's obligation to pay Impositions shall not, except as specifically provided in § 22 hereof, include (i) any Federal income tax payable by the Lessor as a consequence of the receipt of payments provided for herein, or (ii) any income taxes or franchise taxes measured by net income based on such receipts imposed on the Lessor by the state and city in which the Lessor has its principal place of business, except any such tax which is in substitution for, or relieves the Lessee from the payment of, taxes which it would otherwise be obligated to pay or reimburse pursuant hereto.

The Lessee will also pay promptly all Impositions that may be imposed upon any Unit or for the use, maintenance or operation thereof or upon the earnings arising therefrom (except as provided in the immediately preceding paragraph) or upon the Lessor by reason of its acquisition or retention of an interest therein, and will keep at all times each Unit free and clear of all Impositions that might in any way affect the title to such Unit or the interest of the Lessor therein or under this Lease; provided, however, that the Lessee shall be under no obligation to pay any Imposition so long as it is contesting in good faith and by appropriate legal proceedings such

Lessor unrelated to the ownership, use, or possession of the Units) upon or with respect to any Unit, including any accession thereto, or the interests of the Lessor or the Lessee therein, and will promptly discharge or cause to be discharged any such lien, charge, security interest or other encumbrance which arises.

§ 17. Default. For the purpose hereof, each of the following events shall be an "Event of Default".

(a) Default shall be made in payment of any amount payable pursuant to §§ 4, 9 or 23 hereof, and such default shall continue unremedied for ten days.

(b) The Lessee shall make or permit any unauthorized assignment, sublease or other transfer of its interest in this Lease or any of the Units, or default shall be made by the Lessee in the performance of any covenant set forth in § 10 hereof.

(c) Default shall be made by the Lessee in the observance or performance of any of its other covenants or agreements contained herein and such default shall continue unremedied for 30 days after written notice from the Lessor to the Lessee specifying such default and demanding that it be remedied.

(d) The Lessee shall (i) apply for or consent to the appointment of a receiver, trustee or liquidator for it or any of its property, (ii) admit in writing its inability to pay its debts as they mature, (iii) make a general assignment for the benefit of creditors, (iv) be adjudicated a bankrupt or insolvent, (v) file a voluntary petition in bankruptcy, or a petition or answer seeking reorganization or an arrangement with creditors or to take advantage of any bankruptcy, reorganization, insolvency, readjustment of debt, dissolution or liquidation law, or an answer admitting the material allegations of a petition filed against it in any proceeding under any such law; the Lessee shall take action for the purpose of effecting any of the foregoing; or there shall be commenced against the Lessee without its application, approval or consent a proceeding under any bankruptcy, reorganization or insolvency law or which seeks reorganization of the Lessee or any substantial part of its assets or the appointment of a receiver, trustee or liquidator for the Lessee or any substantial part of its assets, or any substantial part of the assets of the Lessee shall be sequestered, or any creditor of the Lessee shall commence to foreclose a lien, charge or other encumbrance against any Unit, and in any such event, such proceeding,

Imposition and the nonpayment thereof does not, in the opinion of the Lessor, adversely affect the title to any Unit or interest of the Lessor therein or under this Lease. If any Impositions shall have been charged or levied against the Lessor directly and paid by the Lessor, the Lessee shall reimburse the Lessor promptly upon written notification and evidence of payment thereof.

The Lessor agrees that if, in the opinion of independent tax counsel selected by the Lessor and acceptable to the Lessee (and whose fees and expenses shall be paid by the Lessee), a bona fide claim exists for a refund of all or a portion of any Imposition in respect of which the Lessee has made payment to the Lessor, the Lessor shall, upon the request, and at the sole expense, of the Lessee, take all such reasonable legal or other action deemed appropriate by such counsel in order to sustain such claim. The Lessor shall not be obligated to take any such action unless the Lessee shall first have provided indemnification satisfactory to the Lessor for all liabilities and expenses (including reasonable fees and disbursements of counsel) which may be entailed therein. Provided that no Event of Default or event or condition which with the giving of notice or passage of time or both would become an Event of Default shall have occurred and be continuing, the Lessee shall be entitled to the proceeds of the successful prosecution of any such claim.

In the event any reports with respect to Impositions are required to be made, the Lessee will, at its own expense, make such reports in such manner as to show the interests of the Lessor in the Units and notify the Lessor thereof; provided, however, that if the Lessee is not permitted to make such reports, it will so notify the Lessor and will furnish the Lessor with all information necessary for the Lessor to make such reports.

The Lessee shall, whenever reasonably requested by the Lessor, submit to the Lessor copies of returns, statements, reports, billings and remittances, or furnish other evidence satisfactory to the Lessor of the Lessee's performance of its duties under this § 8. The Lessee shall also furnish promptly upon request such data as the Lessor reasonably may require to permit its compliance with the requirements of taxing jurisdictions.

In the event that, during the Term, the Lessee becomes liable for the payment or reimbursement of any Imposition pursuant to this § 8, such liability shall continue, notwithstanding the termination of this Lease, until it has been paid or reimbursed by the Lessee.

§ 9. Casualty Occurrences. In the event that at any time during the Term or prior to the return of any Unit pursuant to §§ 18 or 20 hereof, as the case may be, any Unit shall become worn out, lost, stolen, destroyed, or irreparably damaged, from any cause whatsoever, or the title thereto or use thereof shall be taken or requisitioned in the manner described in the next succeeding paragraph (a "Casualty Occurrence"), the Lessee shall promptly notify the Lessor in writing thereof. On the Rent payment date next succeeding such notice the Lessee shall pay to the Lessor an amount equal to the sum of: (i) all accrued but unpaid Rent in respect of such Unit, plus (ii) the installment of Rent due and payable on such date, plus (iii) the Casualty Value (as hereinafter defined) of such Unit as of such date. Upon payment of such sum in respect of any Unit and payment by the Lessee of any other amounts then due hereunder, Rent for such Unit shall cease to accrue, this Lease shall thereupon terminate with respect to such Unit and (except in the case of the loss, theft or complete destruction of such Unit) the Lessor shall be entitled to recover possession of such Unit.

The taking or requisition (by condemnation or otherwise under authority of law) of the title to or use of any Unit shall constitute a Casualty Occurrence, if:

(i) title to such Unit is taken or requisitioned by any Federal, state, or foreign government (or any agency or political subdivision of any thereof);

(ii) use of such Unit is taken or requisitioned by any foreign government or political subdivision or agency thereof for any period, whether of definite or indefinite duration;

(iii) use of such Unit is taken or requisitioned by the government (or any agency thereof) of the United States of America or any State thereof for a stated period which exceeds 90 days or extends beyond the expiration of the Term and the Lessor notifies the Lessee in writing that such taking or condemnation constitutes a Casualty Occurrence; or

(iv) use of such Unit is taken or requisitioned by the government (or any agency thereof) of the United States of America or any State thereof for an indefinite period which in fact extends for not

less than 90 days or until beyond the expiration of the Term and the Lessor notifies the Lessee in writing that such taking or condemnation constitutes a Casualty Occurrence.

The Lessee shall give the Lessor prompt written notice of any taking or requisition of any Unit, whether or not under authority of law and whether or not then constituting a Casualty Occurrence.

In the event that any Unit is taken or requisitioned by condemnation or otherwise under authority of law in a circumstance which does not constitute a Casualty Occurrence, all of the Lessee's obligations under this Lease with respect to such Unit, including, but not limited to, payment of Rent shall continue in full force and effect as if such taking or requisition had not occurred. Provided that no Event of Default or other event which with the giving of notice or passage of time or both would constitute an Event of Default shall have occurred and be continuing, all payments received by the Lessor or the Lessee during the Term with respect to such a taking or requisition not constituting a Casualty Occurrence shall be paid over to, or retained by, the Lessee.

Following the payment by the Lessee of the Casualty Value of any Unit suffering a Casualty Occurrence arising from a taking or requisition, the Lessee shall be entitled to receive condemnation payments in respect of such Unit up to an amount equal to such Casualty Value, plus one-half of all such payments, if any, in excess of such Casualty Value and the other one-half of such payments, if any, shall be the property of the Lessor. In the event such Unit shall be returned by the governmental entity prior to the time the Lessee shall have been reimbursed by application of condemnation payments in an amount equal to such Casualty Value, the Lessee shall dispose of such Unit as agent for the Lessor, and shall retain the proceeds of such disposition to the extent that the aggregate of the amounts so retained and the condemnation payments theretofore received by the Lessee equal such Casualty Value. The Lessee shall also retain one-half of the balance of such proceeds, if any, after provision for all actual and reasonable expenses of sale and the other one-half of the balance of such proceeds, if any, shall be promptly paid to the Lessor. In the event such Unit shall be returned by the governmental entity following the time the Lessee shall have been reimbursed by such application of condemnation payments in an amount equal to the Casualty Value thereof, such Unit shall be returned by the Lessee to the Lessor in the manner provided in § 20 hereof.

The Lessor hereby appoints the Lessee its agent to dispose of any Unit suffering a Casualty Occurrence, except as otherwise provided in the immediately preceding paragraph, at the best price obtainable on an "as is, where is" basis. Provided that the Lessee has previously paid the Casualty Value to the Lessor, the Lessee shall retain the proceeds of such sale to the extent they do not exceed the Casualty Value of such Unit, shall retain one-half of the balance of such proceeds, if any, after provision for all actual and reasonable expenses of sale and shall pay the other one-half of the balance of such proceeds, if any, to the Lessor.

For the purpose hereof, the "Casualty Value" of a Unit as of any Rent payment date or date after the expiration of the Term shall be the percentage of the Purchase Price of such Unit set forth in Schedule B hereto with respect to such date.

Whenever any Unit shall suffer a Casualty Occurrence after the expiration of the Term, but before such Unit shall have been returned pursuant to §§ 18 or 20 hereof, the Lessee shall promptly notify the Lessor with respect thereto and pay to the Lessor within 10 business days after such notice of such Unit, an amount equal to the Casualty Value of such Unit, as of the date on which such Casualty Occurrence occurred.

Except as otherwise provided in this § 9, the Lessee shall not be released from any of its obligations under this Lease in the event of, and shall bear the risk of, any Casualty Occurrence to any Unit which has become subject to this Lease.

§ 10. Insurance. The Lessee will, at its expense, maintain or cause to be maintained at all times during the Term (and thereafter so long as the Lessee is required to store or redeliver any Unit pursuant to §§ 18 or 20), physical damage and public liability insurance covering the Units in the names of the Lessor and the Lessee and in such amounts, with such insurers and with such coverages and deductibles, if any, as shall be satisfactory to the Lessor and consistent with prudent industry practice by lessees and owners of similar equipment. The Lessee shall deliver to the Lessor on or prior to the date on which the first Units are accepted pursuant to § 2 hereof and at such other times during the Term as the Lessor may request a certificate of insurance for each policy of insurance so maintained.

Without limiting the foregoing, each such insurance policy shall provide that it will not be invalidated as against

the Lessor because of any violation of a condition or warranty of the policy or application therefor by the Lessee and that it may be altered or cancelled by the insurer only upon thirty days' written notice to the Lessor and the Owner. All public liability policies shall name the Lessor as an additional insured. All policies covering loss or damage to the Units shall provide that payment thereunder shall be made to the Lessor.

Any insurance proceeds as the result of insurance carried by the Lessee and any amounts received (unless paid to an insurer) in settlement from a railroad under the interchange rules of the Association of American Railroads (the "AAR") in respect of any Unit suffering a Casualty Occurrence shall be deducted from the Casualty Value payable by the Lessee to the Lessor in respect of such Casualty Occurrence pursuant to § 9 hereof. If the Lessor shall receive any such insurance proceeds or settlement amounts or any condemnation payments after the Lessee has paid to the Lessor the Casualty Value with respect to a Unit pursuant to § 9 hereof without deduction for such insurance proceeds, settlement amounts or condemnation payments, the Lessor shall pay such insurance proceeds, settlement amounts or condemnation payments to the Lessee up to an amount equal to the Casualty Value paid by the Lessee with respect to such Unit and the balance, if any, of such insurance proceeds, settlement amounts or condemnation payments shall remain the property of the Lessor. Provided that no Event of Default or event or condition which with the giving of notice or passage of time or both would constitute an Event of Default shall have occurred and be continuing, all insurance proceeds received by the Lessor in respect of any Unit not suffering a Casualty Occurrence shall be paid to the Lessee upon proof satisfactory to the Lessor that any damage to such Unit in respect of which such proceeds were paid has been fully repaired.

§ 11. Reports; Financial Statements. On or before April 1 in each year, commencing April 1, 1980, the Lessee will furnish to the Lessor a certificate of an officer of the Lessee: (i) setting forth as at the preceding December 31 the amount, description and identifying numbers of all Units then leased hereunder, the amount, description and identifying numbers of all Units that have suffered a Casualty Occurrence during the preceding calendar year or are then undergoing repairs (other than running repairs) or have been withdrawn from use pending such repairs and such other information regarding the condition and state of repair of the Units as the Lessor may reasonably request, (ii) stating that, in the case of all Units repainted or repaired during the period covered by such statement, the identifying numbers and marks required by

§ 7 hereof have been preserved or replaced and (iii) stating that the Lessee has performed or caused to be performed its maintenance obligations for each Unit pursuant to §§ 13 and 14 hereof. In the event that at any December 31 the Units leased hereunder shall not have changed, and no Casualty Occurrence shall have occurred, since the preceding December 31, the Lessee need not deliver the certificate required by this paragraph. The Lessee's failure so to deliver such a certificate shall be deemed an affirmation of such matters as well those set forth in clauses (ii) and (iii) of this paragraph.

The Lessor shall have the right, at its expense, by its employees or agents, to inspect the Units and the Lessee's records with respect thereto at such reasonable times as the Lessor may request during the Term.

The Lessee will furnish to the Lessor (1) as soon as available and in any event within 60 days after the end of each of the first three fiscal quarters in each of the Lessee's fiscal years a balance sheet as at the end of such fiscal quarter and the related statements of income, retained earnings and changes in financial position for the portion of the Lessee's fiscal year then ending (on a consolidated basis if the Lessee shall then have any subsidiaries) all in reasonable detail and stating in comparative form the figures for the comparable period of the preceding fiscal year, certified by a principal financial officer of the Lessee; (ii) as soon as available and in any event within 120 days after the end of each of the Lessee's fiscal years the balance sheet of the Lessee and the related statements of income, retained earnings and changes in financial position of the Lessee for such fiscal year (on a consolidated basis if the Lessee shall then have any subsidiaries), all in reasonable detail and stating in comparative form the figures for the previous fiscal year, certified by the Lessee's independent public accountants; and (iii) such other financial information regarding the Lessee as the Lessor may from time to time reasonably request.

§ 12. Disclaimer of Warranties. THE LESSOR MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE DESIGN OR CONDITION OF, OR AS TO THE QUALITY OF THE MATERIAL, EQUIPMENT OR WORKMANSHIP IN, ANY UNIT. THE LESSOR MAKES NO WARRANTY OF MERCHANTABILITY OR FITNESS OF ANY UNIT FOR ANY PARTICULAR PURPOSE OR AS TO TITLE TO ANY UNIT OR ANY COMPONENT THEREOF, OR ANY OTHER REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO ANY UNIT, EITHER UPON DELIVERY THEREOF TO THE LESSEE OR OTHERWISE. All risks as to such matters shall be borne, as between the Lessor and the Lessee, by the Lessee. During the Term, the Lessor shall have no responsibility or

liability to the Lessee or any other person with respect to:

- (i) any liability, loss or damage caused or alleged to be caused directly or indirectly by any Unit or by any inadequacy thereof or deficiency or defect therein (whether latent or patent) or by any other circumstances in connection therewith;
- (ii) the use, operation or performance of any Unit or any risks relating thereto;
- (iii) any interruption of service, loss of business or anticipated profits or consequential damages; or
- (iv) the delivery, operation, servicing, maintenance, repair, improvement or replacement of any Unit.

The Lessor hereby appoints and constitutes the Lessee its agent and attorney-in-fact during the Term, for so long as no Event of Default or event or condition which with the giving of notice or passage of time or both would constitute an Event of Default shall have occurred and be continuing, to assert and enforce from time to time, in the name of and for the account of the Lessor or the Lessee, as their interests may appear, at the Lessee's expense, whatever claims and rights the Lessor may have (whether accruing directly or through assignment from the Sublessee) against the Builder with respect to, or arising out of the manufacture and sale of the Units or any of them.

The Lessee's delivery of a Certificate of Acceptance pursuant to § 2 hereof shall be conclusive evidence as between the Lessee and the Lessor that the Units described therein are in all respects satisfactory to the Lessee. The Lessee will not assert any claim of any nature whatsoever against the Lessor based upon any of the matters described in the first paragraph of this § 12.

§ 13. Regulatory Compliance. The Lessee agrees for the benefit of the Lessor to comply, in all respects, with

- (i) all laws of the jurisdictions in which operations involving the Units may extend (including, without limitation, laws with respect to the use, maintenance and operation of the Units),
- (ii) the interchange rules of the AAR and (iii) all rules of the Department of Transportation, the ICC and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Units, to the extent that such laws and rules affect the title, operation or use of the Units. In the event that such laws or rules require any alteration, replacement or addition of or to any part on any Unit, the Lessee will comply therewith at its own expense; provided, however, that the Lessee may, at its own expense, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Lessor, adversely affect the interest of the Lessor in the Units or the rights of the Lessor under this Lease.

The Lessee agrees, at its own expense, to prepare and deliver to the Lessor within a reasonable time prior to the required date of filing (or, to the extent permissible, file on behalf of the Lessor, and the Lessor hereby appoints the Lessee its agent and attorney-in-fact to do so) any and all reports, other than tax returns, to be filed by the Lessor with any Federal, state or other regulatory authority by reason of the Lessor's interest in the Units, or their lease under this Lease to the Lessee.

§ 14. Maintenance. The Lessee agrees that, at its expense, it will at all times during the Term maintain and keep each Unit in good operating order, repair and condition, reasonable wear and tear excepted; provided, however, that in any event the Lessee shall maintain the Units in at least as good condition as required by the interchange rules of the AAR and as other railroad equipment leased or owned by the Lessee.

Except as otherwise required by § 13 hereof, the Lessee shall not, without the prior written consent of the Lessor, permit any alteration, addition or modification to be made to any Unit or any special device or assembly to be attached to any Unit, in either case which adversely affects the Unit's originally intended use or commercial value. Any and all additions to any Unit and any and all parts installed on and replacements made to any Unit (except equipment or devices which have been added to such Unit by the Lessee, the cost of which is not included in the Purchase Price of such Unit, which are not required pursuant to § 13 hereof and which may be readily removed from such Unit without materially affecting such Unit or the originally intended use or commercial value thereof) shall constitute accessions to such Unit and title thereto shall immediately vest in the Lessor. The Lessee shall, at its own expense, take all actions necessary to insure that title to any such accessions shall vest free from any lien, charge, security interest or encumbrance, in the Lessor.

§ 15. Indemnification. The Lessee agrees to indemnify, protect and hold harmless the Lessor and its successors, assigns, agents and employees (collectively, "Indemnified Persons") from and against all losses, damages, injuries, causes of action, judgments, liabilities, patent liabilities, penalties, interest, claims and demands whatsoever, regardless of the cause thereof, and reasonable expenses in connection therewith, (including, but not limited to, reasonable fees and disbursements of counsel and costs of investigation) in any way relating to or arising out of or alleged to arise out of this Lease, the Sublease, any Event of Default, the ownership of

any Unit, the ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage or return of any Unit or any accident in connection with the operation, use, condition, possession, storage or return of any Unit (collectively, "Claims"). The indemnities arising under this § 15 shall continue in full force and effect notwithstanding the expiration of the Term and are for the benefit of, and shall be enforceable by, each Indemnified Person.

Without limiting the generality of the preceding paragraph, the Lessee shall indemnify each Indemnified Person against Claims originating prior to the later of the return by the Lessee of the Units or the end of the free storage period for the Units pursuant to §§ 18 and 20 hereof which relate to: (i) the manufacture, construction, purchase, acceptance, rejection, ownership, delivery, non-delivery, lease, sublease, possession, use, operation, condition, sale, return or other disposition of any Unit, (ii) any latent or other defects in any Unit, whether or not discoverable by the Lessor or the Lessee, (iii) any claim for patent, trademark or copyright infringement, (iv) any claim based on strict liability in tort, (v) any injury to or the death of any person or any damage to or loss of property on or near the Units or in any manner growing out of or connected with, or alleged to grow out of or be connected with, the ownership, use, replacement, adaptation or maintenance of the Units or of any other equipment in connection with the Units (whether owned or under the control of the Lessor, the Lessee or any other person) or resulting or alleged to result from the condition of any thereof, (vi) any violation, or alleged violation, of any provision of this Lease or of any agreement, law, rule, regulation, ordinance or restriction, affecting or applicable to the Units or the leasing, ownership, use, replacement, adaptation or maintenance thereof or (vii) the execution, delivery and performance of this Lease; provided, however, that this indemnity shall not extend for the benefit of any Indemnified Person to any Claim which arises from the gross negligence or willful misconduct of such Indemnified Person. The Lessee and the Lessor agree to give each other, promptly upon obtaining knowledge thereof, written notice of any claim or liability so indemnified against.

The Lessee shall be obligated under this § 15, irrespective of whether any Indemnified Person shall also be indemnified with respect to the same matter by any other person. Any Indemnified Person seeking to enforce the Lessee's indemnification under this § 15 may proceed directly against the Lessee without first resorting to any such other rights of

indemnification. The Lessee shall be liable hereunder for all reasonable costs and expenses (including without limitation reasonable fees and disbursements of counsel) of any such proceeding against it, if such Indemnified Person is successful therein.

In case any action, suit or proceeding is brought against any Indemnified Person in connection with any Claim, the Lessee may and, upon such Indemnified Person's request, will, at the Lessee's expense, resist and defend such action, suit or proceeding, or cause the same to be resisted or defended by counsel selected by the Lessee and approved by such Indemnified Person and, in the event of a failure by the Lessee to do so, the Lessee shall pay all reasonable costs and expenses (including without limitation reasonable fees and disbursements of counsel) incurred by such Indemnified Person in connection with such action, suit or proceeding.

In the event the Lessee is required to make any payment to an Indemnified Person under this § 15, the Lessee shall pay such Indemnified Person an amount which, after deduction of all taxes required to be paid by such Indemnified Person in respect of the receipt thereof under the laws of the United States of America or of any political subdivision thereof (after giving credit for any savings in respect of any such taxes by reason of deductions, credits or allowances in respect of the payment of the expense indemnified against), shall be equal to the amount of such payment. Upon payment in full by the Lessee of any amounts payable pursuant to this § 15, and provided that no Event of Default or event or condition which with lapse of time or giving of notice or both would constitute an Event of Default shall have occurred and be continuing, the Lessee shall be subrogated to any right of such Indemnified Person (except against another Indemnified Person) in respect of the matter regarding which payment has been made. Any payments received by such Indemnified Person from any person (except the Lessee) as a result of any matter regarding which such Indemnified Person has been paid by the Lessee pursuant to this § 15 shall be paid over to the Lessee to the extent necessary to reimburse the Lessee for indemnification payments previously made in respect of such matter.

Nothing in this Lease shall constitute a guaranty by the Lessee of the residual value of any Unit.

§ 16. Liens. The Lessee, at its own expense, will promptly pay or discharge any and all amounts claimed by any party which, if unpaid, might become a lien, charge, security interest or other encumbrance (other than an encumbrance created by the Lessor or resulting from claims against the

Lessor unrelated to the ownership, use, or possession of the Units) upon or with respect to any Unit, including any accession thereto, or the interests of the Lessor or the Lessee therein, and will promptly discharge or cause to be discharged any such lien, charge, security interest or other encumbrance which arises.

§ 17. Default. For the purpose hereof, each of the following events shall be an "Event of Default".

(a) Default shall be made in payment of any amount payable pursuant to §§ 4, 9 or 23 hereof, and such default shall continue unremedied for ten days.

(b) The Lessee shall make or permit any unauthorized assignment, sublease or other transfer of its interest in this Lease or any of the Units, or default shall be made by the Lessee in the performance of any covenant set forth in § 10 hereof.

(c) Default shall be made by the Lessee in the observance or performance of any of its other covenants or agreements contained herein and such default shall continue unremedied for 30 days after written notice from the Lessor to the Lessee specifying such default and demanding that it be remedied.

(d) The Lessee shall (i) apply for or consent to the appointment of a receiver, trustee or liquidator for it or any of its property, (ii) admit in writing its inability to pay its debts as they mature, (iii) make a general assignment for the benefit of creditors, (iv) be adjudicated a bankrupt or insolvent, (v) file a voluntary petition in bankruptcy, or a petition or answer seeking reorganization or an arrangement with creditors or to take advantage of any bankruptcy, reorganization, insolvency, readjustment of debt, dissolution or liquidation law, or an answer admitting the material allegations of a petition filed against it in any proceeding under any such law; the Lessee shall take action for the purpose of effecting any of the foregoing; or there shall be commenced against the Lessee without its application, approval or consent a proceeding under any bankruptcy, reorganization or insolvency law or which seeks reorganization of the Lessee or any substantial part of its assets or the appointment of a receiver, trustee or liquidator for the Lessee or any substantial part of its assets, or any substantial part of the assets of the Lessee shall be sequestered, or any creditor of the Lessee shall commence to foreclose a lien, charge or other encumbrance against any Unit, and in any such event, such proceeding,

sequestration or foreclosure action shall continue unstayed and in effect for a period of 45 days.

(e) The Lessee or any of its subsidiaries shall default (and such default shall not have been cured or waived) in the payment of principal of, or interest on, any obligation for borrowed money or for the deferred purchase price of any property or in the payment of any obligation under a material lease (as defined in clause (a)(xi) of § 21 hereof) or any obligation guaranteed by it or in respect of which it is contingently liable, for a period equal to the period of grace, if any, applicable to such default; or the Lessee or any of its subsidiaries shall default in the performance or observance of any other term, condition or covenant contained in any obligation referred to above or in any agreement or instrument relating thereto if as a result of such default such obligation has become, or has been declared to be, due and payable prior to its stated maturity.

(f) Final judgments for the payment of money exceeding \$100,000 in the aggregate and not fully covered by insurance shall be rendered against the Lessee by courts of competent jurisdiction and shall remain undischarged for a period of 30 days during which execution shall not be effectively stayed.

(g) Any representation or warranty made by the Lessee in this Lease or in any financial statement, certificate or other document furnished to the Lessor in connection herewith or pursuant hereto shall prove to have been false or misleading in any material respect on or as of the date when made.

If an Event of Default shall occur, then at any time thereafter, during the continuance of any Event of Default, the Lessor, at its option, may:

(A) proceed by appropriate court action or actions either at law or in equity to enforce performance by the Lessee of its obligations under this Lease or to recover damages for the breach hereof, including, but not limited to, net after-tax loss of Benefits (as defined in § 22 hereof); or

(B) by notice in writing to the Lessee, terminate this Lease, whereupon all rights of the Lessee to the use of the Units shall absolutely cease and terminate as though this Lease had never been made, but the Lessee shall remain liable as herein provided; and thereupon the Lessor may by its agents

enter upon the premises of the Lessee or other premises where any of the Units may be and take possession of all or any of such Units and thenceforth hold, possess and enjoy the same free from any right of the Lessee, or its successors, sublessees or assignees, to use the Units for any purposes whatever; but the Lessor shall, nevertheless, have the right to recover from the Lessee any Rent or other amounts which under the terms of this Lease may be then due or which may have accrued to the date of such termination (computing the Rent for any number of days less than a full quarter by multiplying the Rent for such quarter by a fraction of which the numerator is such number of days and the denominator is the total number of days in such quarter) and also to recover forthwith from the Lessee as damages for loss of the bargain and not as a penalty:

(i) a sum, with respect to each Unit, which represents either:

(I) the excess, if any, of (X) the present value, at the time of such termination, of the entire unpaid balance of all Rent for such Unit which would otherwise have accrued hereunder from the date of such termination to the end of the Term over (Y) the present value, at the time of such termination, of the Rent which the Lessor reasonably estimates to be obtainable for such Unit during such period, such present value to be computed in each case on the basis of a 8% per annum discount, compounded quarterly from the respective dates upon which Rent would have been payable hereunder had this Lease not been terminated;

or, in the Lessor's sole discretion,

(II) the excess, if any, of (X) the Casualty Value of such Unit as of the date of termination over (Y) the net proceeds of the sale of such Unit, if it has been sold, or the amount the Lessor reasonably estimates to be its net sales value, if it has not been sold; plus in any event

(ii) any damages and reasonable expenses (including without limitation reasonable fees and disbursements of counsel) which the Lessor shall have sustained by reason of the breach of any covenant, agreement, representation or warranty contained in this Lease

other than for the payment of Rent; plus in any event

(iii) amounts, if any, payable in respect of lost Benefits pursuant to § 22 hereof.

If Lessee does not agree with Lessor's estimate pursuant to subclause (B)(i)(I)(Y) of this § 17, such estimate shall be determined in the manner specified in § 23 hereof for determining Fair Market Rent.

The remedies provided in this Lease shall not be deemed exclusive, but shall be cumulative and may be exercised concurrently or consecutively, and shall be in addition to all other remedies in the Lessor's favor existing at law or in equity. The Lessee hereby waives any requirements of law, now or hereafter in effect, which might limit or modify the remedies herein provided to the Lessor, to the extent that such waiver is not, at the time of its effect, prohibited by applicable law.

The failure of the Lessor to exercise the rights granted to it hereunder upon the occurrence of an Event of Default shall not constitute a waiver of any such rights upon the continuation or recurrence of that or any other Event of Default.

§ 18. Return of Units Upon Default. If this Lease shall be terminated pursuant to § 17 hereof, the Lessee shall forthwith deliver possession of the Units to the Lessor. Each Unit so delivered shall be in the condition in which it is required to be maintained pursuant to §§ 13 and 14 hereof. The Lessee shall deliver to the Lessor at the time at which each Unit is so delivered a certificate executed by an officer of the Lessee to the effect that such Unit complies with all requirements of §§ 13 and 14 hereof. The Lessee shall also deliver to the Lessor, if so requested by the Lessor, all maintenance records relating to all Units required to be redelivered pursuant to this § 18. If so requested by the Lessor, the Lessee shall, at its own expense, remark and repaint each Unit in the manner designated by the Lessor and remove any additions or accessions thereto designated by the Lessor. For the purpose of delivering possession of the Units to the Lessor, the Lessee shall:

(a) forthwith and in the usual manner (including, but not limited to, giving prompt telegraphic and written notice to the AAR and to any railroads to which any Unit has been interchanged or which may

have possession of any Unit to return such Unit or Units) assemble the Units and place them upon such storage tracks as the Lessor reasonably may designate;

(b) cause the Units or any of them to be stored until such Units have been sold, leased or otherwise disposed of by the Lessor; and

(c) transport the Units or any of them to such place within 500 miles of any tracks of the Sublessee as the Lessor reasonably may designate.

The assembly, delivery, storage, and transportation of the Units shall be at the expense and risk of the Lessee and are of the essence of this Lease. Upon application to any court of equity having jurisdiction, the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee set forth in this § 18. During any storage period, the Lessee will, at its own expense, perform all its obligations with respect to the Units pursuant to §§ 13, 14 and 16 hereof and will permit the Lessor or any person designated by it, including any authorized representative of any prospective purchaser or lessee of any Unit, to inspect the Units. The Lessee shall pay to the Lessor for each day after the termination of the Lease during which any Unit is not assembled, delivered and stored as provided in this § 18, an amount equal to the greater of (i) all amounts earned in respect of such Unit by the Lessee for such day or (ii) .03515% of the Purchase Price of such Unit. Without limiting the obligations of the Lessee pursuant to this § 18, the Lessee hereby irrevocably appoints the Lessor as its agent and attorney-in-fact, with full power and authority, at any time while the Lessee is obligated to deliver possession of any Unit to the Lessor, to demand and take possession of such Unit in the name and on behalf of the Lessee from whomsoever shall then be in possession of such Unit.

§ 19. Assignment; Possession; Use. This Lease shall be assignable in whole or in part by the Lessor without the consent of the Lessee. Any such assignment may be absolute or for security purposes only. All rights of the Lessor hereunder (including, but not limited to, the rights under §§ 4, 8, 9, 15 and 17 hereof) shall inure to the benefit of such assignee; provided, however, that the Lessee shall in all events continue to make all payments of Rent to the original Lessor, as provided in § 4 hereof, until notified in writing to the contrary by the original Lessor.

Provided that no Event of Default or event or condition which with the giving of notice or passage of time or both would constitute an Event of Default hereunder shall have occurred and be continuing, the Lessee shall be entitled to the possession and use of the Units in accordance with the terms of this Lease, as against the Lessor and persons claiming through the Lessor, but, without the prior written consent of the Lessor, the Lessee shall not, except as provided in the immediately succeeding paragraph, assign, sublease or otherwise transfer its leasehold interest under this Lease or in any Units.

Provided that no Event of Default or event or condition which with the giving of notice or passage of time or both would constitute an Event of Default shall have occurred and be continuing: (i) the Lessee or any corporation wholly owned by the Lessee or by which the Lessee is wholly owned (an "Affiliate") shall be entitled to use the Units upon lines of railroad owned or operated by it or upon lines of railroad over which the Lessee or any Affiliate has trackage or other operating rights or over which railroad equipment of the Lessee or any Affiliate is regularly operated pursuant to contract, and also to permit the use of the Units upon connecting and other carriers in the usual interchange of traffic or pursuant to run-through agreements; (ii) or sublease to others the Units or any of them, but, in either case, only upon and subject to all the terms and conditions of this Lease; provided, however, that the Lessee shall not (without the prior written consent of the Lessor) assign or permit the assignment of any Unit to service involving the regular operation and regular maintenance thereof outside the United States of America; and (iii) the Lessee may receive and retain compensation from railroads and sublessees so using any of the Units.

§ 20. Expiration of Term. As soon as practicable after the expiration of the Term, the Lessee will, at its own expense, deliver possession of the Units to the Lessor upon such storage tracks of railroads as the Lessor may designate within 250 miles of any tracks of the Sublessee in the absence of such designation, as the Lessee may select, and permit the Lessor to store the Units on such tracks for a period not exceeding one hundred eighty days and to transport the same, at any time within such one hundred eighty-day period, to any reasonable place on such tracks selected by the Lessor. The Lessee shall deliver to the Lessor at the time at which each Unit is so delivered a certificate executed by an officer of the Lessee to the effect that such Unit complies with all requirements of §§ 13 and 14 hereof. The Lessee shall also deliver to the Lessor, if so requested by the Lessor,

all maintenance records relating to all Units required to be redelivered pursuant to this § 20. If so requested by the Lessor, the Lessee shall, at its own expense, remark and repaint each Unit in the manner designated by the Lessor and remove any additions or accessions thereto designated by the Lessor.

The assembly, delivery, storage, and transportation of the Units shall be at the expense and risk of the Lessee. During any such storage period the Lessee will permit the Lessor or any person designated by it, including any authorized representative of a prospective lessee or purchaser of any Unit, to inspect the same. Each Unit returned to the Lessor pursuant to this § 20 shall be in the condition in which it is required to be maintained pursuant to §§ 13 and 14 hereof. The assembly, delivery, storage, and transportation of the Units are of the essence of this Lease. Upon application to any court of equity having jurisdiction, the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee set forth in this § 20. The Lessee shall pay to the Lessor for each day after the termination of this Lease during which any Unit is not assembled, delivered and stored as provided in this § 20 an amount equal to the greater of (i) all amounts earned by the Lessee in respect of such Unit for such day or (ii) .03515% of the Purchase Price of such Unit.

§ 21. Representations and Warranties. (a) The Lessee represents and warrants to the Lessor that as of the date hereof:

(i) The Lessee is a corporation duly organized, validly existing and in good standing under the laws of its jurisdiction of incorporation, has all requisite corporate power and authority to own its properties and to carry on its business, as presently conducted, and is duly qualified to do business and in good standing in each jurisdiction in which the failure to so qualify would have a material adverse effect upon the financial condition of the Lessee or its ability to perform its obligations under this Lease.

(ii) The Lessee has all requisite corporate power to execute and deliver this Lease and to perform its obligations hereunder.

(iii) The Lessee is not a party to any agreement or instrument or subject to any charter or other corporate

restriction which would have a material adverse effect upon its financial condition or its ability to perform its obligations under this Lease.

(iv) The Lessee has heretofore delivered to the Lessor its audited balance sheet as at the end of its most recent fiscal year, and its audited statements of income, retained earnings and changes in financial position for the fiscal year then ended, which financial statements are correct and complete and fairly present the financial condition of the Lessee as at the date and for the period reflected therein and were prepared in accordance with generally accepted accounting principles consistently applied (subject to any exceptions stated therein or in the notes thereto).

(v) Since the date of the balance sheet referred to in clause (iv) above, there has been no material adverse change in the condition, financial or other, of the Lessee.

(vi) The execution, delivery and performance by the Lessee of this Lease will not conflict with, or result in a breach of, any provision of law, any regulation, order, injunction or decree of any court or governmental instrumentality, the charter (as amended), any preferred stock provision or the by-laws (as amended) of the Lessee or of any note, material lease (as defined in clause (xi) of this paragraph (a)), conditional sale agreement, equipment trust agreement, mortgage, indenture, or other agreement or instrument to which the Lessee is a party or by which it or any of its property may be bound, or constitute a default, or result in the creation of any lien, charge, security interest or other encumbrance upon any of the properties of the Lessee, under any such provision.

(vii) No authorization or approval is required from any governmental agency or commission or any public or quasi-public body or authority with respect to the execution, delivery or performance by the Lessee of this Lease or for the enforceability hereof against the Lessee.

(viii) This Lease has been duly authorized, executed and delivered by the Lessee and, assuming due authorization, execution and delivery hereof by the Lessor, is a legal, valid and binding agreement, enforceable against the Lessee in accordance with its terms.

Lessor by or on behalf of the Lessee in connection herewith contains any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements contained herein or therein not misleading.

(xiv) The Lessee estimates that, on the date of delivery and acceptance of each Unit pursuant to § 2 hereof, the remaining useful life of such Unit at the end of the original term of this Lease will be not less than 20% of the original term of this Lease and that each Unit will have a fair market value at the end of the original term of this Lease of not less than 20% of the Purchase Price of such Unit.

(b) The Lessor hereby represents and warrants to the Lessee that as of the date hereof:

(i) The Lessor is a corporation duly organized, validly existing and in good standing under the laws of its jurisdiction of incorporation and has all requisite corporate power and authority to own its properties and carry on its business as presently conducted.

(ii) The execution, delivery and performance of this Lease by the Lessor have been duly authorized by all requisite corporate action.

§ 22. Income Tax Indemnity. This Lease has been entered into on the assumptions that:

(a) the Lessor, as the owner of the Units, will be entitled to the maximum depreciation deduction (the "ADR Deduction") with respect to the Units authorized under Section 167 of the Internal Revenue Code of 1954, as amended (the "Code"), (i) utilizing a 12-year depreciable life, which is the lower limit listed in Revenue Procedure 77-10, 1977-1 C.B. 548, for property in Asset Guideline Class No. 00.25, in accordance with the Class Life Asset Depreciation Range System described in Section 167(m) of the Code and the Treasury Regulations promulgated thereunder as in effect on the date hereof, (ii) employing initially the 200% declining-balance method of depreciation with a change, without the consent of the Service, to the sum-of-the-years-digits method of depreciation when most beneficial to the Lessor, (iii) including in the basis of the Units the entire Purchase Price thereof and all other items properly includable under Section 1012 of the Code, (iv) calculated on the basis of the "half year" or "modified half-year" convention, as appropriate, pursuant to

(IV) the failure of the Lessor to follow the proper procedure in claiming any Benefit (but for this purpose any procedure approved in writing by the Lessee within 30 days after written notice from the Lessor shall be deemed a proper procedure); or

(V) the failure of the Lessor to have sufficient income to benefit from the Depreciation Deduction.

The Lessor agrees that if, in the opinion of independent tax counsel selected by the Lessor and approved by the Lessee ("Counsel"), a bona fide claim to all or a portion of any Benefit exists in respect of which the Lessee would otherwise be required to pay to the Lessor pursuant to the immediately preceding paragraph increased Rent and additional Rent in respect of any interest and/or penalty, the Lessor shall, upon request and at the expense of the Lessee, take all such legal or other appropriate action deemed reasonable by Counsel in order to sustain such claim; provided, however, that the Lessor shall not be obligated to take any such action unless the Lessee shall first have indemnified the Lessor for all liabilities and expenses which may be entailed therein and shall have furnished the Lessor with such reasonable security therefor as may be requested. The Lessor may, at its option, take such action prior to making payment of any tax and interest and/or penalty attributable to the loss, disallowance or recapture of all or any portion of any Benefit (a "Tax Payment") or may make such Tax Payment and then sue for a refund.

If the Lessor takes such action prior to making a Tax Payment, such increased Rent and additional Rent need not be paid by the Lessee while such action is pending. In such case, if the final determination shall be adverse to the Lessor, the increased Rent shall be computed as of the date of such final determination and the Lessee shall commence payment thereof on the Rent payment date next succeeding such final determination and, on or before such Rent payment date, the Lessee shall pay to the Lessor, as additional Rent, an amount equal to all interest and penalties paid by the Lessor in respect of such final determination, together with interest thereon at the rate specified in § 24 hereof from the date such payment is made by the Lessor to the date the Lessee reimburses the Lessor therefor.

If the Lessor makes such Tax Payment and then sues for a refund, such increased Rent shall commence to be payable by the Lessee on the first Rent payment date after such Tax Payment is made and, on or before such Rent payment date,

the Lessee shall pay to the Lessor, as additional Rent, an amount equal to all interest and penalties paid by the Lessor included in such Tax Payment. In such event, if the final determination shall be in favor of the Lessor, the Rent payable by the Lessee to the Lessor shall be reduced to the Rent that would have been payable if such increase had not been made (or such reduction shall be made proportionately if the final determination is partly favorable and partly adverse to the Lessor) and such reduced Rent shall commence to be payable by the Lessee on the Rent payment date next succeeding such final determination. In addition in such event, the Lessor shall pay to the Lessee (M) an amount equal to the increased Rent theretofore paid by the Lessee to the Lessor (or a proportionate part thereof if the final determination is partly favorable and partly adverse to the Lessor) on or before such next succeeding Rent payment date and (N) the amount of any penalties or interest refunded to the Lessor as a result of such final determination and any interest paid to the Lessor by the Service with respect to such refund, promptly upon receipt thereof.

In the event that any payment is required to be made pursuant to this § 22 and such payment is required to be made at a time at which this Lease shall have been terminated, the party required to make such payment shall pay all amounts so payable and not theretofore paid by it within 30 days of the date on which the obligation to make such payment arose.

In the event that the Rent payable pursuant to § 4 hereof shall be adjusted as provided in this § 22, the Casualty Values set forth in Schedule B hereto and incorporated in § 9 hereof shall be adjusted accordingly.

As used in this § 22, the term "Lessor" shall be deemed to include the members of the affiliated group, as defined in Section 1504 of the Code, of which the Lessor is a member which files a consolidated return for Federal income tax purposes.

The obligations of the Lessee pursuant to this § 22 are in addition to all other payment obligations of the Lessee pursuant to this Lease, including without limitation those set forth in §§ 8, 15 and 17 hereof.

The obligation to pay any amounts which may become payable pursuant to this § 22 shall survive the expiration of the Term or other termination of this Lease.

§ 23. Renewal Option; Right of First Refusal.
Provided that this Lease has not been earlier terminated and

that no Event of Default or event or condition which with the giving of notice or passage of time or both would constitute an Event of Default shall have occurred and be continuing, the Lessee may, by written notice delivered to the Lessor not less than six months prior to the end of the original term or (subject to the last sentence of this paragraph) any renewal term of this Lease, renew this Lease with respect to all but not less than all of the Units then subject to this Lease. Such renewal shall be upon the terms and conditions set forth herein, except that the Basic Rent payable pursuant to § 4 hereof shall be the Fair Market Rent (as hereinafter defined) for such Units. This Lease may be so renewed for up to five successive two year periods, commencing immediately upon the expiration of the original term hereof.

For the purpose hereof, the "Fair Market Rent" of any Unit shall be determined by a qualified independent appraiser selected by mutual agreement between the Lessor and the Lessee, or failing such agreement, by a panel of three independent appraisers, one of whom shall be selected by the Lessor, one of whom shall be selected by the Lessee, and the last of whom shall be designated by the two appraisers so selected. If either the Lessor or the Lessee refuses or fails to appoint an appraiser or a third appraiser cannot be agreed upon by the other two appraisers within 45 days after the Lessee has timely notified the Lessor of its election to renew this Lease, such appraiser or appraisers shall be selected in accordance with the rules for commercial arbitration of the American Arbitration Association. The appraiser or appraisers selected shall be instructed to make the determination of Fair Market Rent for the Units then subject to this Lease within 45 days following the appointment of the last appraiser to be appointed and to promptly communicate such determination to the Lessor and the Lessee in writing. Any such determination of Fair Market Rent for the Units shall be binding upon the Lessor and the Lessee. The fees and expenses of any such appraisers and the expenses of any such appraisal proceeding shall be borne one-half by the Lessor and one-half by the Lessee, unless such appraisal proceeding is held pursuant to § 17 hereof, in which event all such fees and expenses shall all be borne by the Lessee.

Subject to the provisions of the first paragraph of this § 23, if the Lessor shall have or shall propose to exercise its purchase option under the Prime Lease and shall propose (at any time during the Term or within three months thereafter) to sell or to contract to sell the Units to any person unaffiliated with the Lessor on or after the expiration of the Term and shall have received a bona fide offer from such a person to purchase any or all of the Units, it shall so notify the Lessee

in writing, specifying the price and material terms and conditions pursuant to which it proposes to sell such Units. Provided that no Event of Default or event or condition which with the giving of notice or passage of time or both would constitute an Event of Default shall have occurred and be continuing, the Lessee shall have the option, exercisable within 30 business days after the receipt of such notice from the Lessor, to purchase all but not less than all of the Units proposed to be sold by the Lessor at the price, and upon the material terms and conditions, at which the Lessor proposes to sell such Units. In the event that the Lessee so purchases any Unit, upon payment by the Lessee of the purchase price therefor, the Lessor shall execute and deliver to the Lessee or the Lessee's assignee or nominee a bill of sale for such Unit on an "as is, where is" basis without any representation or warranty by, or recourse to, the Lessor. The Lessee shall pay or cause to be paid all sales and use taxes payable in connection with such sale to it of any Unit.

§ 24. Interest. If the Lessee shall fail to pay when due any installment of Rent or other amount due hereunder, the Lessee shall promptly pay to the Lessor, upon demand, interest on such overdue amount for the period for which payment is overdue at a rate equal to the lesser of (i) 10% per annum or (ii) the maximum rate then permitted by applicable law.

§ 25. Notices. Any notice required or permitted to be given to either party hereto shall be deemed to have been given two business days after mailing, first class, postage prepaid, addressed as follows:

(a) if to the Lessee, at

Three Embarcadero Center,
17th Floor
San Francisco, CA 94111
Attention: Vice President - Finance;

and

(b) if to the Lessor, at

10 Gould Center
Rolling Meadows, Illinois 60008
Attention: Portfolio Manager;

or addresssed to either party at such other address as such party shall hereafter furnish to the other party in writing.

§ 26. Entire Agreement; Modification. This Lease, including the Schedules and Exhibits hereto, exclusively and completely states the rights of the Lessor and the Lessee with respect to the Units and supersedes all other agreements, commitments and expressions of intent, oral or written, with respect thereto. No variation or modification of this Lease and no waiver of any of the provisions or conditions hereof shall be valid unless in writing and signed by duly authorized officers of both the Lessor and the Lessee.

§ 27. Execution; Recordation. This Lease may be executed in several counterparts, all of which shall constitute one and the same instrument, but the counterpart delivered to the Lessor and stamped "Original" shall be the original hereof and the only counterpart which constitutes chattel paper and all other counterparts shall be duplicates. This Lease is dated for convenience as of the date first above written, but the actual date or dates of execution hereof are the dates stated in the acknowledgments hereto.

The Lessee will from time to time do and perform any action and will execute, acknowledge, deliver, file, register, record (and will refile, reregister and redeposit and re-record whenever required) any and all further instruments, required by law or reasonably requested by the Lessor for the purpose of properly protecting the interest of the Lessor in the Units or the Sublease or for the purpose of carrying out the intention of this Lease. The Lessee will promptly furnish to the Lessor evidence of all such filings, registrations, or recordations and an opinion or opinions of counsel for the Lessee with respect thereto satisfactory to the Lessor.

§ 28. Governing Law. This Lease shall be governed by the laws of the State of Illinois; provided, however, that the parties shall be entitled to all rights conferred by Section 20c of the Act.

§ 29. Performance by Lessor. If the Lessee fails to perform or comply with any of its covenants or agreements contained in this Lease, the Lessor may, upon notice to the Lessee, perform or comply with such covenant or agreement, and the costs and expenses incurred by the Lessor in connection with such performance or compliance, together with interest at the rate provided in § 24 hereof, shall be payable by the Lessee to the Lessor upon demand.

§ 30. Investment Credit. The Lessor agrees to cooperate with the Lessee in electing for purposes of Section 48(d) of the Code to treat the Sublessee as having acquired the

Units. The Lessor will file the necessary election so to treat the Sublessee if the Lessee has provided to the Lessor all necessary forms completed for filing. The Lessor represents that it has not and will not claim the Investment Credit in respect of the Units on its tax returns; provided, however, that the Lessor does not warrant the availability of the Investment Credit with respect to the Units.

§ 31. Records. The Lessee shall retain all records related to this for not less than four years following the expiration of the Term.

§ 32. Performance by Sublessee. The Lessee may cause any of its duties and obligations hereunder to be performed by the Sublessee, and such performance by the Sublessee will constitute performance by the Lessee for all purposes of this Lease.

IN WITNESS WHEREOF, the parties hereto have caused this Lease to be executed by their duly authorized officers as of the date first above written.

BRAE CORPORATION

By



President

GOULD FINANCIAL INC.

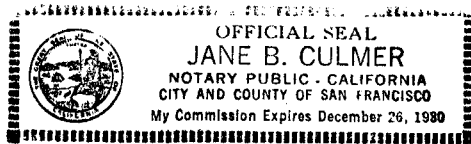
By



SRP

STATE OF CALIFORNIA)
) SS:
CITY AND COUNTY OF SAN FRANCISCO)

On this 28th day of December, 1978, before me personally appeared William J. Texido, to me personally known, who, being by me duly sworn, says that he is the President of BRAE CORPORATION, that the foregoing instrument was signed on behalf of such corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of such corporation.



Jane B Culmer

Notary Public

[Notarial Seal]

My Commission expires: *December 26 / 1980*

STATE OF ILLINOIS

COUNTY OF COOK

)
) SS:
)

On this 29th day of December, 1978, before me personally appeared Walter L. Crowley, to me personally known, who, being by me duly sworn, says that he is General Mgr. Pres. of GOULD FINANCIAL INC., that the foregoing instrument was signed on behalf of such corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of such corporation.

Loren Part
Notary Public

[Notarial Seal]

My Commission expires: June 20, 1982

PURCHASE AGREEMENT

For purposes of the Lease, the "Purchase Agreement" shall mean the Sublessee's Purchase Order No 1049 dated September 1978 and the Builder's letter to the Sublessee dated August 3, 1978.

<u>UNITS</u>							
<u>Builder</u>	<u>Type</u>	<u>AAR Mechanical Designation</u>	<u>Quantity</u>	<u>Place of Delivery</u>	<u>Unit Base Price</u>	<u>Total Base Price</u>	<u>Identifying Numbers of Lessee (Both Inclusive)</u>
Greenville Steel Car Company	High Cube Box Cars	XL	20	Greenville, Pennsylvania	\$66,050	\$1,321,000	AA 10000 - AA 10019

SCHEDULE B

CASUALTY VALUES

<u>Rent Payment Date Number</u>	<u>Casualty Value as a Percentage of Purchase Price</u>
1	101.256017
2	101.329432
3	101.345384
4	101.302806
5	101.200614
6	101.037922
7	100.819838
8	100.546339
9	100.213745
10	99.826715
11	99.384169
12	98.910812
13	98.449039
14	97.933268
15	97.364531
16	96.739722
17	96.057780
18	95.324534
19	94.539707
20	93.698838
21	92.800872
22	91.854365
23	90.857743
24	89.805192
25	88.695655
26	87.540434
27	86.336647
28	85.077132
29	83.760836
30	82.401799
31	80.995840
32	79.534447
33	78.016573
34	76.458999
35	74.856250
36	73.198464
37	71.484597
38	69.734177
39	67.940432
40	66.092156

SCHEDULE B

CASUALTY VALUES

<u>Rent Payment Date Number</u>	<u>Casualty Value as a Percentage of Purchase Price</u>
41	64.188315
42	62.251182
43	60.272693
44	58.240296
45	56.152970
46	54.035737
47	51.879240
48	49.669584
49	47.405765
50	45.114188
51	42.782799
52	40.397002
53	37.955771
54	35.485482
55	32.972001
56	30.400672
57	27.770400
58	25.150840
59	22.572362
60	20.000026

EXHIBIT I

CERTIFICATE OF ACCEPTANCE

BRAE CORPORATION, (the "Lessee") certifies that:

(a) the terms used herein shall have the respective meanings defined in the Lease of Railroad Equipment dated as of December 1, 1978 (hereinafter called the Lease) between the Lessee and the Gould Financial Inc. (the "Lessor");

(b) the undersigned is a duly authorized representative of the Lessee;

(c) the Units listed below have been inspected and found to have been completed in conformity with the Purchase Agreement and the applicable specifications, requirements and standards referred to therein:

<u>Number of</u> <u>Units</u>	<u>Identifying</u> <u>Numbers</u>	<u>Place of</u> <u>Acceptance</u>	<u>Date of</u> <u>Acceptance</u>
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(d) the Lessee, as the agent of the Lessor under the Lease, has accepted delivery of such Units under the Purchase Agreement;

(e) the Lessee hereby accepts delivery of such Units under the Lease, upon the terms and subject to the conditions set forth therein;

(f) such Units conform to all applicable ICC requirements and specifications, to all standards recommended by the AAR and to all requirements of the Lease; and

(g) nothing contained in this Certificate of Acceptance is intended to or shall relieve the Builder of any of its warranties set forth or referred to in the Purchase Agreement.